

AMENDED IN ASSEMBLY MAY 29, 2003  
AMENDED IN ASSEMBLY APRIL 22, 2003  
AMENDED IN ASSEMBLY MARCH 20, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 418**

**Introduced by Assembly Member Pacheco**

February 14, 2003

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An act to amend Section 22358 of the Business and Professions Code, and to amend Sections 415.20, 415.45, ~~and 415.46~~ 415.46, and 1167.4 of, and to add Section 415.95 to, the Code of Civil Procedure, relating to civil actions.

### LEGISLATIVE COUNSEL'S DIGEST

AB 418, as amended, Pacheco. Civil actions: service of summons.

*Existing law requires persons who make more than 10 services of process within this state during one year, for compensation, as specified, to file and maintain a verified certificate of registration. Existing law also provides that the certificate may be revoked or suspended under certain conditions.*

*This bill would authorize a court to order the county clerk to immediately revoke the certificate of registration of a process server upon finding that the process server has committed perjury.*

Existing law establishes the procedures by which a person or business organization may be served a summons and complaint in a civil action.

This bill would revise and recast those provisions. The bill would, among other things, allow a summons and complaint to be served by leaving a copy of these documents at the usual mailing address of the

person to be served, followed thereafter by a mailed copy. The bill would additionally allow a business organization, form unknown, to be served by leaving a copy of the summons and the complaint with the person who is apparently in charge of the office of that organization and thereafter mailing a copy of the summons and complaint to the person to be served, as specified. The bill would also make related changes and technical, nonsubstantive changes to those provisions.

*Existing law authorizes a defendant to file a motion to quash service of summons in a civil action.*

*This bill would authorize a court, in an unlawful detainer proceeding, to award costs and reasonable attorney's fees to the defendant upon granting a motion to quash service of summons on the ground that the process server has made a false declaration on the proof of service. The bill would prohibit the action from proceeding until these costs and fees are tendered to the defendant.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. *Section 22358 of the Business and Professions*  
2 *Code is amended to read:*  
3 22358. (a) A certificate of registration may be revoked or  
4 suspended whenever it has been determined that the registrant has  
5 made a service of process, including service completed by an  
6 employee or independent contractor of the registrant, which does  
7 not comply with the provisions of law governing the service of  
8 process in this state or constitutes an improper service of process  
9 not amounting to a violation of law.  
10 (b) An investigation concerning the revocation or suspension  
11 of a certificate of registration may be commenced at any time at  
12 the option of the county clerk if the county clerk deems it to be  
13 appropriate. A complaint by any person who has alleged that he or  
14 she has been injured by a service of process shall be investigated  
15 by the public prosecutor. The investigation shall determine if the  
16 registrant complied with the provisions of law governing the  
17 service of process or constituted improper service of process not  
18 amounting to a violation of the law.  
19 (c) If the public prosecutor determines from the investigation  
20 that cause may exist for the suspension or revocation of the



certificate of registration, he or she shall set the matter for hearing and give notice to the registrant. That hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code except that the decision of the administrative law judge shall be final. For the purposes of those provisions, the public prosecutor shall be deemed to be the agency.

(d) If, after the hearing, the county clerk is notified after the decision has become effective that the administrative law judge has directed that the registrant's certificate be suspended or revoked, the county clerk shall forthwith suspend or revoke the certificate. If the certificate is revoked, the bond or cash deposit required by Section 22353 shall be forfeited to the county treasury subject to the right of a person to recover against the bond or cash deposit under Section 22357.

(e) *In any action, upon a finding that a registered process server has committed perjury, the court may order the county clerk to immediately revoke the certificate of registration of the process server.*

SEC. 2. Section 415.20 of the Code of Civil Procedure is amended to read:

415.20. (a) In lieu of personal delivery of a copy of the summons and of the complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

(b) If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and

1 complaint at the person's dwelling house, usual place of abode,  
2 usual place of business, or usual mailing address other than a  
3 United States Postal Service post office box, in the presence of a  
4 competent member of the household or a person apparently in  
5 charge of his or her office, place of business, or usual mailing  
6 address other than a United States Postal Service post office box,  
7 at least 18 years of age, who shall be informed of the contents  
8 thereof, and by thereafter mailing a copy of the summons and of  
9 the complaint by first-class mail, postage prepaid to the person to  
10 be served at the place where a copy of the summons and of the  
11 complaint were left. Service of a summons in this manner is  
12 deemed complete on the 10th day after the mailing.

13 ~~SEC. 2.~~

14 *SEC. 3.* Section 415.45 of the Code of Civil Procedure is  
15 amended to read:

16 415.45. (a) A summons in an action for unlawful detainer of  
17 real property may be served by posting if upon affidavit it appears  
18 to the satisfaction of the court in which the action is pending that  
19 the party to be served cannot with reasonable diligence be served  
20 in any manner specified in this article other than publication and  
21 that either of the following applies:

22 (1) A cause of action exists against the party upon whom  
23 service is to be made or he or she is a necessary or proper party to  
24 the action.

25 (2) The party to be served has or claims an interest in real  
26 property in this state that is subject to the jurisdiction of the court  
27 or the relief demanded in the action consists wholly or in part in  
28 excluding that party from any interest in the property.

29 (b) The court shall order the summons to be posted on the  
30 premises in a manner most likely to give actual notice to the party  
31 to be served, and, if requested, to all other persons who may claim  
32 to occupy the premises and direct that a copy of the summons and  
33 the complaint be mailed by certified mail to the party at his or her  
34 last known address. Mailing to all other persons who may claim to  
35 occupy the premises shall be in the manner prescribed in  
36 subdivision (c) of Section 415.46.

37 (c) Service of the summons in this manner is deemed complete  
38 on the 10th day after posting and mailing.

39 (d) Notwithstanding an order for posting of the summons, a  
40 summons may be served in any other manner authorized by this



1 article, except publication, in which event that service shall  
2 supersede any posted summons.

3 ~~SEC. 3.~~

4 *SEC. 4.* Section 415.46 of the Code of Civil Procedure is  
5 amended to read:

6 415.46. (a) In addition to the service of a summons and  
7 complaint in an action for unlawful detainer upon a tenant and  
8 subtenant, if any, as prescribed by this article, a prejudgment claim  
9 of right to possession may also be served on any person who  
10 appears to be or who may claim to have occupied the premises at  
11 the time of the filing of the action. Service upon occupants shall  
12 be made pursuant to subdivision (c) by serving a copy of a  
13 prejudgment claim of right to possession, as specified in  
14 subdivision (f), ~~on top of and~~ attached to a copy of the summons  
15 and complaint at the same time service is made upon the tenant and  
16 subtenant, if any. ~~The prejudgment claim of right to possession~~  
17 ~~shall appear first, with any other papers or documents attached~~  
18 ~~underneath.~~

19 (b) Service of the prejudgment claim of right to possession in  
20 this manner shall be effected by a marshal, sheriff, or registered  
21 process server.

22 (c) When serving the summons and complaint upon a tenant  
23 and subtenant, if any, the marshal, sheriff, or registered process  
24 server shall make a reasonably diligent effort to ascertain whether  
25 there are other adult occupants of the premises who are not named  
26 in the summons and complaint by inquiring of the person or  
27 persons who are being personally served, or any person of suitable  
28 age and discretion who appears to reside upon the premises,  
29 whether there are other occupants of the premises.

30 If the identity of an occupant is disclosed to the officer or  
31 process server and the occupant is present at the premises, the  
32 officer or process server shall serve that occupant with a copy of  
33 the prejudgment claim of right to possession ~~on top of and~~ attached  
34 to a copy of the summons and complaint. If personal service cannot  
35 be made upon that occupant at that time, service may be effected  
36 by (1) leaving a copy of a prejudgment claim of right to possession  
37 ~~on top of and~~ attached to a copy of the summons and complaint  
38 addressed to that occupant with a person of suitable age and  
39 discretion at the premises, (2) affixing those documents, ~~in the~~  
40 ~~manner prescribed above~~, so that they are not readily removable,

1 in a conspicuous place on the premises, in a manner most likely to  
2 give actual notice to that occupant, and (3) sending those  
3 documents, ~~in the manner prescribed above~~, addressed to that  
4 occupant by first-class mail.

5 In addition to the service on an identified occupant, or if no  
6 occupant is disclosed to the officer or process server, or if  
7 substituted service is made upon the tenant and subtenant, if any,  
8 the officer or process server shall serve a prejudgment claim of  
9 right to possession for all other persons who may claim to occupy  
10 the premises at the time of the filing of the action by (1) leaving  
11 a copy of a prejudgment claim of right to possession ~~on top of and~~  
12 attached to a copy of the summons and complaint at the premises  
13 at the same time service is made upon the tenant and subtenant, if  
14 any, (2) affixing those documents, ~~in the manner prescribed above~~,  
15 so that they are not readily removable, in a conspicuous place on  
16 the premises so that it is likely to give actual notice to an occupant,  
17 and (3) sending those documents, ~~in the manner prescribed above~~,  
18 addressed to “all occupants in care of the named tenant” to the  
19 premises by first-class mail. Service may also be made on all other  
20 persons who may claim to occupy the premises pursuant to  
21 subdivision (b) of Section 415.45. Service pursuant to subdivision  
22 (b) of Section 415.45 is deemed complete on the 10th day after  
23 posting and mailing.

24 ~~Failure to attach a copy of the summons and complaint to the~~  
25 ~~prejudgment claim of right of possession, as prescribed in this~~  
26 ~~section, or attaching any papers or documents on top of the~~  
27 ~~prejudgment claim of right of possession, shall invalidate service~~  
28 ~~of the prejudgment claim of right to possession.~~

29 The person serving process shall state the date of service on the  
30 prejudgment claim of right to possession form. However, the  
31 absence of the date of service on the prejudgment claim of right to  
32 possession does not invalidate the claim.

33 (d) Proof of service under this section shall be filed with the  
34 court and shall include a statement that service was made pursuant  
35 to this section. Service on occupants in accordance with this  
36 section may not alter or affect service upon the tenant or subtenant,  
37 if any.

38 (e) If an owner or his or her agent has directed and obtained  
39 service of a prejudgment claim of right to possession in accordance  
40 with this section, no occupant of the premises, whether or not the

- 1 occupant is named in the judgment for possession, may object to
- 2 the enforcement of that judgment, as prescribed in Section 1174.3.
- 3 (f) The prejudgment claim of right to possession shall be made
- 4 on the following form:



1 NOTE TO PRINTING OFFICE: INSERT CAMERA-READY  
2 COPY HERE  
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4 for Prejudgment Claim of Right to Possession form as printed on  
5 pages 4 to 7 of Chapter 57, 1991 Statutes.  
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1 ~~SEC. 4.~~

2 SEC. 5. Section 415.95 is added to the Code of Civil  
3 Procedure, to read:

4 415.95. A summons may be served on a business  
5 organization, form unknown, by leaving a copy of the summons  
6 and ~~the~~ complaint during usual office hours with the person who  
7 is apparently in charge of the office of that business organization,  
8 and by thereafter mailing a copy of the summons and complaint by  
9 first-class mail, postage prepaid, to the person to be served at the  
10 place where a copy of the summons and complaint was left.  
11 Service of a summons in this manner is deemed complete on the  
12 10th day after the mailing.

13 SEC. 6. *Section 1167.4 of the Code of Civil Procedure is*  
14 *amended to read:*

15 1167.4. Notwithstanding any other provision of law, in any  
16 action under this chapter:

17 (a) Where the defendant files a notice of motion as provided for  
18 in subdivision (a) of Section 418.10, the time for making the  
19 motion shall be not less than three days nor more than seven days  
20 after the filing of the notice.

21 (b) The service and filing of a notice of motion under  
22 subdivision (a) shall extend the defendant's time to plead until five  
23 days after service upon him of the written notice of entry of an  
24 order denying his motion, except that for good cause shown the  
25 court may extend the defendant's time to plead for an additional  
26 period not exceeding 15 days.

27 (c) *Upon granting a motion to quash service of summons on the*  
28 *ground that the process server has made a false declaration on the*  
29 *proof of service, the court shall award costs and reasonable*  
30 *attorney's fees to the defendant. The action shall not proceed until*  
31 *these costs and attorney's fees are tendered to the defendant.*

